



Recent Changes to the Risk Management Program Rule

The Environmental Protection Agency (EPA) recently published revisions to the Risk Management Program rule, part of the regulations under Clean Air Act section 112(r). These changes include shifting from Standard Industrial Classification Codes to North American Industry Classification System codes; new data elements in the RMP; and requirements for the submission of confidential business information.

EPA established a list of regulated substances and thresholds and issued Risk Management Program regulations under section 112(r) of the Clean Air Act.

The goals of the regulations are to prevent accidental releases of chemicals that could cause serious harm to human health or the environment and to reduce the severity of releases that do occur. A central element of this program is providing state and local governments and the public with information about the risk of chemical accidents and what facilities are doing to prevent such accidents. Covered facilities must implement a risk management program and submit a summary of that program, the Risk Management Plan (RMP), to EPA. In turn, EPA will make the RMP available to the public, intending that the RMP will stimulate dialogue between industry and the public to improve accident prevention and emergency response practices.

Changes in the RMP Program

EPA recently changed the RMP regulations to:

- (1) Adopt a new system to classify regulated processes;
- (2) Add four mandatory and five optional RMP data elements; and

- (3) Establish specific procedures to protect confidential business information.

New Classification System

Section 112(r) divides covered processes into three categories — Program 1 involves minimal requirements and applies to processes that would have no potential impact on the public should an accident release occur. Processes in Program 2 or 3 have additional requirements based on the potential for offsite consequences associated with the worst-case accidental release and their accident history. Part of the method to determine whether Program 3 applies to a facility involves Standard Industrial Classification (SIC) codes.

On January 1, 1997, the U.S. government, in cooperation with the governments of Canada and Mexico, adopted a new industrial classification system, the North American Industrial Classification System (NAICS), to replace the SIC codes. Therefore, EPA is replacing the nine SIC codes used to determine Program 3 applicability with 10 NAICS codes.

RMP SERIES

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New Data Elements

Companies must provide EPA with new mandatory data elements in the registration section of the RMP:

- Method to determine and description of latitude and longitude;
- CAA Title V permit number (if applicable); and
- Percentage weight of a regulated toxic substance in a mixture in the offsite consequence analysis and five-year accident history, and;
- NAICS code for the process that had the release in the accident history.

Companies can opt to provide EPA with the following:

- Name of the Local Emergency Planning Committee (LEPC) for the planning district in which the facility is located;
- Notice of a facility's designation as a Star or Merit rating recipient under OSHA's Voluntary Protection Program;
- Public contact telephone number for the facility;
- Internet homepage address; and
- E-mail address of the facility or its parent company.

Confidential Business Information Claims

The Clean Air Act requires EPA to protect trade secrets, or confidential business information (CBI), from public disclosure. EPA has identified which data elements may be claimed as CBI, and which data elements cannot be claimed as CBI and has established procedures for RMP submissions that contain CBI.

Eligibility: Certain RMP data elements (including chemical identity and maximum quantity in a process) can be claimed as CBI, if a facility can show that making this information publicly available would divulge trade secrets, either directly or through reverse engineering. Businesses claiming CBI based on the threat of reverse engineering must show how reverse engineering could succeed if someone used RMP information that was unprotected.

EPA requires facilities to substantiate all CBI claims. Unsubstantiated claims will be denied. Only a limited number of facilities, chemical manufacturers primarily, are expected to claim RMP data as CBI.

Qualifiers: To qualify for CBI protection:

- Data must not be available to the public through other means;
- The facility must take appropriate steps to prevent disclosure; and
- Disclosure must be likely to cause substantial harm to the facility's competitive position.

Claims Process: To claim CBI, a facility must:

- Submit a sanitized RMP that identifies each data element, except chemical identity, claimed as CBI by the notation "CBI" in the data field;
- For chemical identity, provide a generic chemical category or class name instead of the actual chemical name; and
- Substantiate each item claimed as CBI.

Substantiation or supporting information also may be claimed as CBI. If all or part of the substantiation is claimed as CBI, a sanitized version of substantiation also must be submitted to EPA. The agency will review CBI claims according to existing CAA regulations.

Claiming data as CBI must be done at the time of submittal. Any material not claimed as CBI when the RMP is submitted is considered publicly available data. The owner, operator, or senior official must certify the accuracy of any CBI substantiation claims.

What's Next?

In December 1998, EPA will announce a mailing address where companies should submit their RMPs. In January, the RMP compliance package (diskette or CD-ROM and users manual) will be available.

For More Information...

CAA Section 112(r) Hotline
Monday - Friday, 9 am - 6 pm, EST
(800) 424-9346 or (703) 412-9810
TDD (800) 553-7672

CEPPO Home Page at <http://www.epa.gov/ceppo/>